

*Doe ex dim. MORRIS et Ux. versus ROE.*

**R**ULE, the lessor of the plaintiff to show cause why the writ of possession should not be quashed, and the default and judgment be struck off, with liberty to plead. *Webster*, at whose instance the rule was obtained, swore, that he had never had notice from *Worgan* the tenant in possession, as under tenant to Mr *Brodbelt* the lessee; that he believes *Worgan* intentionally concealed it from him. *James Roper* made an affidavit to the same effect; and that no notice was served on or given to *Brodbelt* any more than to *Webster*.

*Morris*, the lessor of the plaintiff, swore, that *Worgan* told him he would give notice to *Brodbelt* or *Webster*.

Mr BAKER, Mr BROWNE, and Mr RICKETTS showed cause that *Morris* was not in fault, and had done all that was incumbent on him.

ATTORNEY-GENERAL, *contra*, contended, there was manifest management between *Morris* and *Worgan*. He cited 4 *Bur.* 1996; *Salk.* 257; 3 *Blac. Com.* 204. and *Buller*, N. P. 85.

The COURT granted the motion on payment of the plaintiff's costs out of purse.

*Rule absolute.*

PINNOCK et Ux. versus DICKSON, per Guardian, December 2.

**R**ULE, *James Dickson*, Esq; to show cause why he should not pay to the plaintiffs their costs out of purse, by them expended in opposing the motion for quashing the writ of partition issued in this cause.

Affidavits on the former motion, <sup>read</sup> vide antea, p. 239.

Mr BAKER argued, that costs are not ordinarily granted against a prevailing party, and never where such party acts in *autre droit*.

(Mr FRASER cited 2 *Blac. Com.* 439; 5 *Vin. Ab.* 332. 336; 2 *Bur.* 1162; *Ibid.* 1224; *Doug.* 300. <sup>Doug. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 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partition, and subsequent flying off from his agreement, occasioned the former motion and all its consequences; that guardians, executors, &c. are often ordered to pay costs for misbehaviour, *Crompten's Practice*; that, in fact, *Dickson* was not the prevailing party, but the infant; that in the case of the *King* versus *Morgan* et al. *Doug.* 300. the costs were clearly against the prevailing party. Costs in case of new trial.

*Rule absolute.*

EDWARDS versus BAYLY, December 3.

**D**EBT due by the assignee of a bond to *Thomas Harris*, dated the 19th of *April* 1774, for L. 6000 Sterling, equivalent to L. 8400 currency, assigned to the plaintiff after the 13th *February* 1774, viz. the 19th of *April* 1774. Oyer being had of the bond, condition and indorsement, i. e. the assignment, the defendant pleaded, first, That the assignment was, in fact, made after the 19th day of *April* 1774, at some time and place to the defendant unknown, *Absq. hoc*, &c. and, secondly, That the plaintiff ought not to have his action against him, because, at the time when the assignment was in fact made, the whole of the principal and interest was not due to *Harris*; averring, that on the 8th of *May* 1774 L. 1500 Sterling had been paid to *Harris*, and that the assignment is not for the real sum due, *absq. hoc*.

To these pleas the plaintiff demurred specially, and set down for cause, 'That the traverse in the last plea is immaterial, and that the pleas are multifarious, too large and argumentative.

Mr BROWNE, in support of the demurrer, argued, that the L. 1500 is not averred to have been paid in part of the bond; or if it should be so intended by the Court, the bond is nevertheless forfeited; and if payments be shown, the Jury will allow them; the assignee is not stated to have had notice of the payment. Mr RICKETTS, on the same side, cited 4 *Bac. Ab.* 132; *Com. Dig.* 106. After the 19th *April*, at some time and place, too, indefinite, 3 *Lev.* 40. 41. a multifarious traverse of time, place and request, adjudged bad, *Monro* and *Johnston*, last term, 1 *Saund.* 28.

Mr BAKER, *contra*. The stamps on the bond, with other circumstances, he said, show that the assignment was made in *England*; that he conceived an *English* bond unassignable, unless it relates to mortgages, or some *Jamaica* property; that as the act passed in *February* 1774, the ship that carried the news of it to *England* in *April* following must have had an extraordinary voyage, from which he raised a presumption against the assignment, and that it must have been antedated; that the payment on the 8th of *May* cannot be allowed by a Jury, as the property was in the